

House, John

From: Dan Levine [DLevine@kldistributor.com]  
Sent: Wednesday, January 28, 2004 1:06 AM  
To: Reynolds, Randy S  
Subject: Re: Your on to something

Thanks for looking into this. Is there a good time and number to catch up with you on this on Wednesday?

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Dan Levine  
K&L Distributors  
cell phone 206-7798059  
office 206-808-6301  
office fax 2068086300

-----Original Message-----  
From: Reynolds, Randy S <RSR@LIQ.WA.GOV>  
To: Dan Levine <DLevine@kldistributor.com>  
Sent: Tue Jan 27 15:09:40 2004  
Subject: RE: Your on to something

Dan,  
We investigated further and found these 12 packs were being shipped into a warehouse in Washington where they were shrink wrapped into the 3 pack before going to distributors.  
We have called Miller and advised them we believe they are illegal in two ways, this is not a manufacturer original package and they deceived us by price posting as a loose 36 pack of 12 oz cans.  
We may take some kind of administrative action against Miller.  
Anyway, Miller says they won't do this again.  
Randy  
MIW

-----Original Message-----  
From: Dan Levine {mailto:DLevine@kldistributor.com}  
Sent: Thursday, January 08, 2004 6:01 PM  
To: Reynolds, Randy S  
Cc: Greg Steed  
Subject: Your on to something

Randy,  
I think your answer is correct. If they had a 36 pack of 12 ounce cans I would have no problem.

They would have federal label approval and a upc code for that item.

I believe they have niether a upc code or a label approval for a 36 pack. They have a upc code for. 12pack that is being reported.

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-----Original Message-----  
From: Reynolds, Randy S <RSR@LIQ.WA.GOV>  
To: Dan Levine <DLevine@kldistributor.com>  
Sent: Thu Jan 08 16:42:53 2004  
Subject: RE: What is a quantity Discount?

We are going to check deeper into who actually created the package and where  
Resp to Costco RFP  
1001

<b>DEFENDANT'S EXHIBIT</b>	
CASE NO.	C04-0360P
EXHIBIT NO.	558

TX558-001

it came from. Also, like I said earlier, the way it was posted looks like 36 loose 12 oz cans, not 3 12 packs.

-----Original Message-----

From: Dan Levine [mailto:DLevine@kldistributor.com]  
Sent: Thursday, January 08, 2004 4:38 PM  
To: Reynolds, Randy S  
Subject: Re: What is a quantity Discount?

This could be a problem as as you said earlier it is not a problem to have 6 packs priced differently than 12 packs.

The issue is that this 36 pack is a bogus package based on the upc code, by who packages it, etc.

If the 36 pack is legal can I now offer. Brewery posted shrink wrapped 64 case pallet?

If not what is the rationale?

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-----Original Message-----

From: Reynolds, Randy S <RSR@LIQ.WA.GOV>  
To: Dan Levine <DLevine@kldistributor.com>  
Sent: Thu Jan 08 16:30:39 2004  
Subject: RE: What is a quantity Discount?

I don't totally agree, but you have some good points. We have discussed changing the way licensees would post. Each approved label (brand) would be price posted by the ounce, bottle or can. It would not matter how many were in a package, the price would come out the same. Suppliers could not create different packages of the same product and price post them all differently.

Randy

-----Original Message-----

From: Dan Levine [mailto:DLevine@kldistributor.com]  
Sent: Thursday, January 08, 2004 9:52 AM  
To: Reynolds, Randy S  
Subject: What is a quantity Discount?

Randy,

I slept on this and thought of a few important issues that should be addressed:

1. In the past Dave Goyette rejected my posting of shrink wrapped items by claiming they were a quantity discount. He said that the state forbid quantity discounts. The idea of using plastic wrap to disguise a quantity discount was a sham. The fact that the brewery posted it vs. the wholesaler posting it is irrelevant. The two marketing partners are developing a quantity discount option for a big customer.

2. This concept was called a slippery slope. If you can sell three items, then are four ok? How about 40? How about the 64 case pallet that was refused before? If AB posts a Pallet of beer that is shrink wrapped and called a party pack can I now post and sell this item? If not what is the fundamental difference?

3. To me if the Miller 36 pack is allowed then we are saying that the only criteria to make this a legitimate WSLCB posted item is that it was posted

by the Brewery or Winery. The quantity discount restriction is in the State statute. This item was not offered to convenience stores. They are they independent business men that would buy it and break it down. The brewer or distributor offered it to major stores such as QFC that do not even carry full case cans.

4. The issue at stake here seems minor but it is not. If this is allowed at Costco, then we are basically saying that anytime a manufacturer can develop a number of packages held together with plastic that this qualifies as a new item. We are essentially rewriting the state law against quantity discounts. To allow this package we are basically opening the door next time to a way around quantity discounts.

This is one of the major issues in the law suit that Costco is currently threatening the WSLCB with. This issue needs to be reconciled in conjunction with the bigger picture.

5. You may disagree with my interpretation of the legitimacy of the shrink wrap concept. But please consider the normal requirements for a product to be sold by a retailer.

a. The item would have to have federal label approval. In this case not for a refrigerator package of 12 cans but for the 36 pack. This was not done.

b. If the brewery was intending this to be a separate product they would have obtained a separate UPC code for the 36 pack. This was not done. The only UPC code on the item is the one for the 12 case "refrigerator pack" that is sold in other states as a 12 pack not a 36 pack.

c. If Miller Brewing intended this to be a mainstream product as opposed to a special item for Costco the shrink wrap would have graphics on it that show the Miller logo. This does not exist.

6. I believe they did not tell you the correct configuration because the product code you spoke of is for a 12 pack not a 36 pack.

Please call me if you have any more questions.

Dan Levine

-----Original Message-----

From: Reynolds, Randy S [mailto:RSR@LIQ.WA.GOV]  
Sent: Wednesday, January 07, 2004 4:17 PM  
To: Dan Levine  
Subject: RE: Post off of miller 2/12 cans

Dan,

I see your thinking, but then a 12 pack is a quantity discount over a 6 pack and a 24 pack is a quantity discount over a 12 pack. If it is a supplier package and available to all retailers is our main concern. We just think Miller did not really tell us it was 3 12's, it looks more like a loose 36.

Randy

-----Original Message-----

From: Dan Levine [mailto:DLevine@kldistributor.com]

Sent: Wednesday, January 07, 2004 3:57 PM

To: Reynolds, Randy S

Cc: Greg Steed; 'David.Daniels@anheuser-busch.com'

Subject: Re: Post off of miller 2/12 cans

Resp to Costco RFP  
1003



Thanks for following up. If possible please keep my name out of this as I do not want to be penalized by costco.

I still question if it is not a quantity discount. It is still simply 3 12 packs combined into a 36 pack at a cheaper price.

The only thing that makes it a 36 pack is plastic wrapping.

Dan

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Dan Levine

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-----Original Message-----

From: Reynolds, Randy S <RSR@LIQ.WA.GOV>

To: Dan Levine <DLevine@kldistributor.com>

Sent: Wed Jan 07 15:17:18 2004

Subject: RE: Post off of miller 2/12 cans

Dan,

Agent Jeanne Reschan and office staff investigated this. We found that the package came from Miller price posted as a "can-12oz-36", product code 002071128MB, posted at 14.55. Most distributors posted at 19.73 including Columbia of Seattle.

Jeanne checked the Tukwila Costco and Tumwater Costco and they were selling it at 20.89

We only found the product at Costco although other retailers (Safeway, Albertson's and Wal-Mart) were aware of the package and that it was available but chose not to sell it.

This is a supplier package from Miller, but we do think they didn't tell us the right configuration. We will talk to Miller about it.

Randy

-----Original Message-----

From: Dan Levine [mailto:DLevine@kldistributor.com]

Sent: Monday, December 15, 2003 4:37 PM

Resp to Costco RFP  
1004

To: Reynolds, Randy S

Subject: Re: Post off of miller 2/12 cans

I will find out about the other parts os state.

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Dan Levine

K&L Distributors

cell phone 206-409-2260

office 206-808-6301

-----Original Message-----

From: Reynolds, Randy S <RSR@LIQ.WA.GOV>

To: Dan Levine <DLevine@kldistributor.com>

Sent: Mon Dec 15 16:20:33 2003

Subject: RE: Post off of miller 2/12 cans

Thanks, Dan. We will investigate. Do you know if it is just in Costco's in King County, or elsewhere also?

-----Original Message-----

From: Dan Levine [mailto:DLevine@kldistributor.com]

Sent: Monday, December 15, 2003 4:11 PM

To: Reynolds, Randy S

Subject: Re: Post off of miller 2/12 cans

Defiantely coming from a distributor.

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Dan Levine

K&L Distributors

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office 206-808-6301

-----Original Message-----

From: Reynolds, Randy S <RSR@LIQ.WA.GOV>

To: Dan Levine <DLevine@kldistributor.com>

Sent: Mon Dec 15 16:09:50 2003

Subject: RE: Post off of miller 2/12 cans

Dan,

Resp to Costco RFP  
1005

Just want to confirm the package is coming to Costco from a distributor, and is not being packed at Costco.

Randy

-----Original Message-----

From: Dan Levine [mailto:DLevine@kldistributor.com]

Sent: Monday, December 15, 2003 3:59 PM

To: Reynolds, Randy S

Subject: Post off of miller 2/12 cans

Randy,

Thanks for speaking with me on friday regarding the current posting by miller brewing and or their distributor for a 36 can pack of miller lite. First of all my opinion is that this is an illegal posting. The item in question is not a manufacturers item. It is called a refridgerator pack. The refridgerator pack is a 12 pack of miller lite cans configured 2 x 6 instead of the traditional 3x4. Yet is is still a 12 pack of cans. My understanding of the state law is that a package of beer configured in the same number of items has to have the same price posting. No matter the shape of how 12 cans are positioned in their mother carton, a 12 pack of cans gets the same price. On this point I think the "costco" package is illegally posted with the state as this is selling at 19.73 for a 36 pack or 6.58 a 12 pack. This is 9 cents a unit cheaper than the post off price for a 12 pack of miller lite in the 3x4 configuration.

The second problem with the posting is the only difference between this 36 pack and a traditional 12 pack is that the 3 packs have been shrink wrapped together by the distributor. This is done to give a large customer, Costco, a favorable quantity discount because of their potential volume. This is a quantity discount. When Safeco field was about to open K&L distributors posted a 64 pack of shrinkwrapped beer. This was rejected as it was called a quantity discount for a special customer, Safeco field.

About two years ago Pyramid Brewing company sold specailly priced Hefewisen kegs to Safeco field and the Mariott. This was ruled a quantity discount as this was the same product just sold under a slighly different label to achieve a lower price. The situation today with Miller Lite 36 packs is the

Resp to Costco RFP  
1006



same.

Finally this product, the shrink wrapped 36 pack and the individual refridgerator 12 pack are not avialable to the general market. They are only sold at costco. If the broad market was aware of this they would sell this configuration and realize the cents per case savings.

Randy,

This issue has been dealt with in the past on several issues. The bottom line is shrinkwrapping multiple items together at a discounted price is a quantity discount. It is not a gift pack, unless the consumer wants plastic wrapping as a gift.

Given that Costco is threatening the states law prohibiting quantity discounts now more than anyother time the law should be enforced.

Please understand that this is my opinion and I am speaking for my company, not anyother distributor or brewer. I would also like you to investigate this with mu confidentiality being protected.

Please call to discuss.

Dan Levine

2064092260

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Dan Levine

K&L Distributors

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Resp to Costco RFP  
1007